FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Review – Streamline Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Numbering Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
REPLY COMMENTS

The National Telecommunications Cooperative Association (NTCA)[1] hereby files its reply comments in response to the Federal Communications Commission's (Commission or FCC) Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding.[2]

[1] NTCA is a non-profit corporation established in 1954 and represents 545 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as "rural telephone companies" in the Communications Act of 1934, as amended (Act). They are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

[2] *In the Matter of Federal-State Board on Universal Service*, CC Docket No. 96-45, *1998 Biennial Regulatory Review – Streamline Contributor Reporting Requirements Associated with the Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, *Telecommunications Services for Individuals with Hearing*

In its initial comments, NTCA urged the Commission to reject the proposal in the FNPRM that would require carriers to recover federal interstate universal service fund (USF) contributions through an end-user surcharge based on customer connections to the public switched telephone network (PSTN).[3] The proposal unduly favors interexchange carriers (IXCs) by unjustly shifting a disproportionate share of the interstate universal service contribution and collection burden on local exchange carriers (LECs). It also is inherently unfair to no-volume, low-volume, and low-income interstate end-users because it imposes the same charge on each end-user regardless of their usage of interstate service. And, it violates Section 2(b) of the Act because it requires the Commission to regulate services and rates in the intrastate jurisdiction, which the United States Court of Appeals for 5th Circuit has expressly determined is outside the scope of the Commission's jurisdiction.[4] NTCA therefore recommended that the Commission modify the existing revenue-based USF contribution mechanism by: (1) eliminating the wireless safe harbor percentages in the current mechanism; and (2) expanding the list of contributors to include all providers of interstate telecommunications, such as cable, satellite and wireless broadband Internet access providers. NTCA believes this will ensure that the USF contribution mechanism reflects changes in the market and continues to work in an equitable and nondiscriminatory manner.

A significant segment of the Telecom Industry agrees and offers similar recommendations. Verizon urges the Commission not to trade in its revenue-based system for a more complex

---

and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, *Administration with the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size*, CC Docket No. 92-237, NSD File No. L-00-72, *Numbering Resource Optimization*, CC Docket No. 99-200, *Telephone Number Portability*, CC Docket No. 95-116, *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, FCC 02-43, Further Notice of Proposed Rulemaking and Report and Order (rel. Feb. 26, 2002)(FNPRM).

[3] FNPRM, ¶ 2.

system that would impose inequitable charges on local exchange carriers.[5] Verizon requests instead that the FCC modify its current revenue-based system and explore ways to increase contributions from other sources, such as cable modem, satellite, and fixed wireless providers.[6] United States Cellular Corporation (USCC) also requests that the Commission modify the current system by eliminating the wireless safe harbor percentages and expanding the base of contributors to include cable modem, satellite and fixed wireless broadband Internet access providers.[7] Western Wireless also urges the Commission "to retain the current methodology" because "it is the most fair, reliable, and legally defensible system to fund and preserve universal service support."[8]

The Rural Independent Competitive Alliance (RICA) also agrees that the existing system should be improved, but that such improvements should not be accompanied by an "illegal and inequitable shift of the burden away from interexchange carriers and onto local exchange carriers and wireless providers."[9] Verizon Wireless states that the FCC "can best stabilize the USF by broadening the base of contributors and making relatively minor adjustments to the revenue-based contribution mechanism."[10] Arch Wireless also requests that the Commission modify the existing revenue-based system because it is the best solution given the numerous legal and administrative problems that would be introduced by a flat-fee, per-connection assessment methodology.[11] The Rural Cellular Association (RCA) further states the current methodology for assessing universal service contributions is consistent with the Act and cost-causation

---

[4] *Texas Office of Public Utility Counsel v. FCC,*183 F.3d 393, 448 (5th Cir. 1999).
[5] Verizon Initial Comments, pp. 3-4.
[6] *Id.,* p. 2.
[7] USCC Initial Comments, pp. 9-13.
[8] Western Wireless Initial Comments, p. 1. Also see the Initial Comments of Virgin Mobile USA, LLC, pp. 10-16.
[9] RICA Initial Comments, p. 5.
[10] Verizon Wireless Initial Comments, p. 3.
[11] Arch Wireless Initial Comments, pp. 2-7.

principles and that the connection-based proposal fails to meet this criteria."[12] Similarly, VoiceStream asserts that the current contribution mechanism may not be perfect, but the courts have confirmed that the system is lawful and consistent with the requirements of Section 254.[13]

State commissions and consumer advocates also agree that the connection-based proposal is unfair and inequitable to low usage interstate households, violates Section 254(d), and indirectly allows intrastate services to fund federal universal service.[14] California in particular continues to support the FCC's current universal service contribution mechanism.[15] Consultants, too, agree that basing contributions on the number and capacity of connections is inequitable and discriminatory.[16] The National Exchange Carrier Association (NECA) further states that the proposed connection-based system will "almost certainly cause parties to challenge the Commission's new system in court, creating additional uncertainty about universal service funding and potentially jeopardizing the flow of funds."[17] And, USTA asserts that the "current mechanism, with perhaps a few modifications, is the best contribution mechanism considering the requirements of Section 254, as well as practical and administrative considerations."[18]

But for AT&T, WorldCom, Level 3, e-TUG, and the Ad Hoc Telecommunications Users Committee (collectively the "Coalition"), which are the parties behind the connection-based proposal in the FNPRM, no other party appears to have filed comments endorsing the proposal in its entirety. Sprint urges the Commission to adopt its own proposal, and if the FCC does not, it

---

[12] RCA Initial Comments at 8.
[13] VoiceStream Initial Comments , p. 22.
[14] Initial Comments of the California Public Utilities Commission and the People of the State of California, p. 4.
[15] *Id.*
[16] Beacon Telecommunications Advisors, LLC, p. 1.
[17] NECA Initial Comments, Summary, p. i.
[18] USTA Initial Comments, pp. 3-4.

asks the Commission to adopt the Coalition's proposal with a three-year phase-in for wireless carriers.[19]

The Coalition argues its proposal satisfies the requirements in Sections 2(b) and 254(d) of the Act.[20] They could not be more wrong. The critical legal defect in the Coalition proposal is that it does not measure interstate telecommunications services provided by each carrier. A LEC that provides zero interstate services over a network connection would be required to collect and pay a federal USF per-connection fee, while an IXC that provides exclusively interstate services would be required to collect and pay nothing. The proposal therefore violates Section 254(d) because it cannot satisfy the statutory requirement of an "equitable and non-discriminatory" method of assessing interstate universal service contributions.

The proposal also violates Section 2(b) because it would require an illegal assessment of intrastate services and revenues.[21] The United States Court of Appeals for 5th Circuit has expressly determined that the Commission is prohibited, under Section 2(b), from assessing intrastate revenues to support the interstate universal service fund.[22] Given that the connection-based proposal applies universally to customers connected to the local network it fails to reflect differences between the customer's interstate and intrastate usage and differences between providers of interstate and intrastate services. It therefore would inevitably impose a charge on local service and capture intrastate revenues as part of a carrier's contribution to the interstate USF mechanism in violation of Section 2(b).[23]

---

[19] Sprint Initial Comments, p. 3.
[20] Coalition for Sustainable Universal Service Initial Comments, pp. 82-88.
[21] Section 2(b) states that 'nothing in the Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service by wire or radio of any carrier."
[22] *Texas Office of Public Utility Counsel v. FCC,*183 F.3d 393, 448 (5th Cir. 1999).
[23] 47 U.S.C. §2(b).

Bell South and SBC Communications offer the Commission an alternative proposal that would assess universal service contributions on all providers of interstate telecommunications, regardless of the type of service provided and the technology platform used by the service provider.[24] This proposal, unlike the Coalition proposal, does require that IXCs contribute. It also contemplates that facilities-based providers of broadband Internet access contribute. It is different from the Coalition proposal, which excuses IXCs and other telecommunications providers of their statutory obligation to contribute. At a minimum, any alternative to the revenues-based system that endorses the connection based-methodology must provide for equitable contributions by IXCs as well as other telecommunications providers that utilize or connect to the nationwide network. In addition, as NTCA has stated in the Commission's *Wireline Broadband NPRM*,[25] providers such as cable, fixed-wireless and satellite services should be assessed even if the Commission reclassifies self-provisioned wireline broadband Internet access services as telecommunications.

In conclusion, the Commission should reject the Coalition's connection-based, end-user surcharge USF contribution proposal because it violates Sections 2(b) and 254(d) of the Act. The Commission should instead continue to base carrier universal service contributions on interstate and international end-user revenues and ensure an adequate assessment base by

[24] See the Initial Comments of SBC Communications and Bell South (The level of universal service contributions is based on the number of capacity of Qualifying Service Connections (QSCs) for access and interstate transport services provided to end-users, as well as a percentage of revenues from occasional use interstate services. The proposal also requires that all providers that elect to recover universal service contributions must do so through an explicit –line item charge on the end-user's bill.)

[25] *In the Matter of the Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers,* CC Docket No. 02-11, Notice of Proposed Rulemaking, FCC 02-42 (rel. Feb. 15, 2002) (*Wireline Broadband NPRM).*

eliminating the wireless carrier safe harbor provisions and expanding the pool of contributors to include cable, wireless and satellite broadband Internet access providers.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

By: /s/ L. Marie Guillory
L. Marie Guillory

By: /s/ Daniel Mitchell
Daniel Mitchell

Its Attorneys

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

May 13, 2002

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, CC Docket No. 98-171, CC Docket No. 90-571, CC Docket 92-237, CC Docket No. 99-200, CC Docket No. 95-116, CC Docket No. 98-170, FCC 02-57 was served on this 13th of May 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail C. Malloy
Gail C. Malloy

Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW, Room 8B201
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington D.C. 20554

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Qualex International Portals II
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, D.C. 20554

Peter M. Connolly, Esq.
Holland & Knight, LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20036

Marybeth Banks, Esq.
H. Richard Juhnke, Esq.
Jay C. Keithley, Esq.
Sprint Corporation
401 9th Street, N.W., #400
Washington, D.C. 20004

Margot Smiley Humphrey, Esq.
Holland & Knight, LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20036

Stuart Polikoff, Director of Government Relations.
OPASTCO
21 Dupont Circle, N.W., Suite 700
Washington, D.C. 20036

Stuart Polikoff, Director of Government Relations.
OPASTCO
21 Dupont Circle, N.W., Suite 700
Washington, D.C. 20036

Susan M. Gately, Economic Consultants
Anne M. DePree, Economic Consultants
Economics and Technology, Inc.
Two Center Plaza, Suite 400
Boston, MA 02108

James S. Blaszak, Esq.
Stephen J. Rosen, Esq.
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, N.W., Suite 900
Washington, D.C. 20036

Chuck Goldfarb
Lori Wright
WorldCom, Inc.
1133 19th Street, N.W.
Washington, D.C. 20036

A. Richard Metzger, Jr.
A. Renee Callahan
Lawler, Metzger & Milkman
1909 K Street, N.W., Suite 820
Washington, D.C. 20006

Mark C. Rosenblum, Esq.
Judy Sello, Esq.
AT&T
295 North Maple Ave., Room 3252J1
Basking Ridge, NJ 07920

Jonathan Jacob Nadler, Esq.
Angela Simpson, Esq.
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
Box 407
Washington, D.C. 20044

John T. Nakahata, Esq.
Michael G. Grable, Esq.
Harris Wiltshire & Grannis LLP
1200 18th Street, N.W.
Washington, D.C. 20036

Richard M. Sbaratta, Esq.
Bellsouth Corporation
675 West Peachtree Street, N.E.
Suite 4300
Atlanta, GA 30375

Sylvia Lessee, Esq.
John Kuydendall, Esq.
Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W., Suite 520
Washington, D.C. 20037

Howard J. Symons, Esq.
Sara F. Leibman, Esq.
Bryan T. Bookhard, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Ave., N.W., Suite 900
Washington, D.C. 20004-2608

Douglas I. Brandon
Vice President – External Affairs
AT&T Wireless Services
1150 Connecticut Avenue
Fourth Floor
Washington, D.C. 20036

Dennis M. Doyle, Vice President,
Telecommunications
Arch Wireless, Inc.
1800 West Park Drive
Westborough, MA 01581-3912

David Cosson, Esq.
Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W., Suite 520
Washington, D.C. 20037

Edward D. Young, III
Michael E. Glover
Of Counsel
Ann H. Rakestraw, Esq.
Verizon Telephone Companies
1515 North Courthouse Road
Suite 500
Arlington, VA 22201

Gary M. Cohen, Esq.
Lionel B. Wilson, Esq.
Jonady Hom Sun, Esq.
Stacie M. Castro, Esq.
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

John Cornyn, Attorney General of Texas
Howard G. Baldwin, Jr., First Assistant
Attorney General
Jeffrey S. Boyd, Deputy Attorney General for
Litigation
Paul D. Carmon, Chief
Consumer Protection Division
Marion Taylor Drew, Public Agency
Representation Section Chief
Roger B. Borgelt, Assistant Attorney General
Consumer Protection Division
Public Agency Representation Section
P.O. Box 12548
Austin, Texas 78711-2548

A. Sheba Chacko
Kristen Neller Verderame
BT North America Inc.
11911 Freedom Drive, 11th Floor
Reston, VA 20190

Joel S. Winnik, Esq.
David L. Sieradzki, Esq.
Ronnie London, Esq.
Hogan & Hartson
Columbia Square
555 13th Street, N.W.
Washington, D.C. 20004-1109

Doug Kitch
Beacon Telecommunications Advisors, LLC
2110 Vickers Drive, Suite 2106
Colorado Springs, CO 80918

Gene A. DeJordy, Esq.
Suzie Rao, Esq.
Western Wireless Corporation
401 9th Street, N.W., Suite 550
Washington, D.C. 20004

Peter Lurie, Vice President and General
Counsel
Virgin Mobile USA, LLC
22 Fourth Street, 8th Floor
San Francisco, CA 94103

Helen E. Disenhaus, Esq.
Douglas D. Orvis, II
Swidler & Berlin, Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20037

Richard A. Askoff, Esq.
Martha West, Senior Regulatory Manager
National Exchange Carrier Association
80 South Jefferson Road
Whippany, New Jersey 07981

Eric J. Branfman, Esq.
Harry N. Malone, Esq.
Swidler & Berlin, Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20037

Harold Mordkofsky, Esq.
Douglas W. Everette, Esq.
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L. Street, N.W. - Suite 300
Washington, D.C. 20037

Brian T. O'Connor, Vice President
Legislative and Regulatory Affairs
Robert Calaff, Senior Corporate Counsel
Governmental and Industry Affairs
Voicestream Wireless Corporation
401 9th Street, N.W., Suite 550
Washington, D.C. 20004

Cheryl Lynn Schneider, Counsel to ePHONE, Inc.
Telecom Legal Services International Inc.
1776 I Street, N.W., 9th Floor
Washington, D.C. 20006

James Rowe, Executive Director
Alaska Telephone Association
201 E 56th Street, Suite 114
Anchorage, Alaska 99501

Lawrence E. Sarjeant, Esq.
United States Telecom Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

Thomas J. Surgue, Chief
Wireless Telecommunications Bureau
Federal Communication Commission
445 12th Street, SW
Washington, D.C. 20554